



January 14, 2021

By ECF

The Honorable Colleen McMahon  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
Southern District of New York  
500 Pearl St.  
New York, NY 10007-1312

Re: Defendants' Letter Motion to De-Consolidate,  
*Jarrett Payne, et al., v. Mayor Bill de Blasio, et al.*, 20 Civ. 8924 (CM)  
*Charles Henry Wood v. City of New York, et al.*, 20 Civ. 10541 (CM)

Dear Judge McMahon:

We represent the plaintiffs in *Payne, et al. v. de Blasio, et al.*, 20 Civ. 8924 (CM), who bring claims under the First and Fourteenth Amendment and the state constitution against Mayor Bill de Blasio, Police Commissioner Dermot Shea, Chief of Department Terence Monahan, the City of New York, and several individual police officers for their roles in the indiscriminate brutalizing of peaceful protestors during the protests following the death of George Floyd in May and June 2020. We write to correct certain information in Defendants' letter yesterday requesting the Court to de-consolidate the above-referenced matters, ECF No. 25, and to request time to consider the import of the new case filed today by the Office of the New York Attorney General before taking a position on consolidation.

Contrary to Defendants' assertion that Plaintiffs in *Payne* do not assert a claim for municipal liability, it is abundantly clear from the face of the complaint that Plaintiffs have adequately pled a claim for municipal liability against municipal Defendants. *See* ECF No. 1 ¶¶ 2–4, 19–22, 35–69, 164–76, 179–83. In the complaint, Plaintiffs allege Defendants violated the First and Fourth Amendments of the United States Constitution and their counterpart provisions in the New York State Constitution when NYPD officers and their supervisors, including officers at the highest ranks of police leadership, enforced a custom and practice of using excessive force, false arrest, and excessive detention to retaliate against protestors for calling for an end to police violence and abuse and in support of Black Lives Matter after the killing of George Floyd. Defendants City of New York, Mayor de Blasio, Commissioner Shea, and Chief of Department Monahan enforced, promoted, authorized, and sanctioned the practice of using excessive force at these protests, including the unprovoked or unjustified use of pepper spray, baton or fist strikes, and excessively tight handcuffs in retaliation for Plaintiffs' lawful protest.

Further, Defendants' claim that a stay may be appropriate in this case pending the resolution of Plaintiffs' outstanding complaints with the Civilian Complaint Review Board ("CCRB") is without merit. To the contrary, should Defendants establish any problem arising from the simultaneous pendency of this litigation and the CCRB's investigation, it is routine for the CCRB to temporarily suspend an investigation pending the resolution of a civil suit concerning the same set of facts.

This morning, the Office of the New York Attorney General filed a lawsuit against many of the same defendants, *State of New York v. City of New York, et al.*, 21 Civ. 322, bringing claims for excessive force, unlawful search and seizure, and free expression and speech under the Fourth, Fourteenth, and First Amendments of the United States Constitution and their counterpart provisions in the New York State Constitution. Plaintiff in that case has sought to relate it to these proceedings. 21 Civ. 322, ECF No. 3. We therefore request that the Court not take further action on the issue of consolidation until the parties have an opportunity to consult. We respectfully request that the parties be permitted seven days until January 22, 2021, to make more informed arguments to the Court on the subject of consolidation.

Respectfully submitted,

By: /s/ Jessica Perry  
Molly K. Biklen  
Jessica Perry  
Daniel R. Lambright  
Lisa Laplace  
Christopher T. Dunn  
125 Broad Street, 19th Floor  
New York, N.Y. 10004  
(212) 607-3300  
[mbiklen@nyclu.org](mailto:mbiklen@nyclu.org)  
[jperry@nyclu.org](mailto:jperry@nyclu.org)  
[dlambright@nyclu.org](mailto:dlambright@nyclu.org)  
[llaplace@nyclu.org](mailto:llaplace@nyclu.org)  
[cdunn@nyclu.org](mailto:cdunn@nyclu.org)

By: /s/ Corey Stoughton  
Corey Stoughton  
Jennvine Wong  
The Legal Aid Society  
199 Water Street  
New York, N.Y. 10038  
(212) 577-3367  
[cstoughton@legal-aid.org](mailto:cstoughton@legal-aid.org)  
[jwong@legal-aid.org](mailto:jwong@legal-aid.org)

*Attorneys for Plaintiffs in 20 Civ. 8924*